

**PREPARED BY THE COURT**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
GLOUCESTER COUNTY

**BBS o/b/o AS, a minor child**

Plaintiff (s)

DOCKET NO. **GLO-L-299-23-17**

vs.

**GREENWICH TOWNSHIP BOARD OF  
EDUCATION and SCOTT A. CAMPBELL**  
in his official Capacity as School Business  
Administrator/Board Secretary

CIVIL ACTION

Defendant(s)

**ORDER**

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THIS MATTER having come before the Court by Plaintiff's Motion to Enforce Litigants Rights, and Defendants having failed to respond, and the Court having handled this matter as unopposed and deciding same on the papers, and for the reasons set forth in the attached memorandum of decision:

IT IS HEREBY **ORDERED** on this 26<sup>th</sup> day of February, 2024, as follows:

1. Defendants are in violation of litigant's rights.
2. Defendants shall pay Plaintiff all reasonable attorney's fees and costs associated with the preparation and filing of the present application. Such fees shall be paid within sixty days of Plaintiff directly providing Defendants a certification of services. If Defendants disagrees with the amount requested, Defendants shall

file an application with the Court within two weeks of receipt of Plaintiff's demand. No adjournments will be granted to Defendants challenge to the demand. A failure to timely file an objection with the Court will result in the full amount being due to Plaintiffs.

3. Defendants shall pay \$100.00 per day for each day it is not in compliance with the June 15, 2023, Order, effective today, February 26, 2024. Such monies shall be directly paid to Plaintiff, to be held in Plaintiff's trust account until further Order of the Court. Plaintiff shall file a request to release the funds once the June 15, 2023, Order is satisfied. Plaintiff will be entitled to full reimbursement by Defendants of all fees for the filing of the release application. The delinquency monies shall be submitted to Plaintiff every month, starting April 1, 2024.

4. By March 4, 2024, Defendants shall upload a certification by a non-attorney representative of Defendant, that the within Order and memorandum of decision has been provided to such person, that they read it and that it will be distributed to all appropriate members of Defendant at its next regularly scheduled meeting.

*Benjamin C. Telsey, AJSC*  
Benjamin C. Telsey, AJSC

<p>BBS o/b/o AS, a minor child,  Plaintiff,  v.  GREENWICH TOWNSHIP BOARD  OF EDUCATION and SCOTT A.  CAMPBELL in his official capacity as  School Business Administrator/Board  Secretary,  Defendants.</p>	<p><b>SUPERIOR COURT OF  NEW JERSEY  GLOUCESTER COUNTY  DOCKET NO.: GLO-L-299-23</b></p> <p><b>MEMORANDUM OF DECISION</b></p>
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For the reasons that follow, the Court finds that Defendants have violated Plaintiff's litigants' rights, and accordingly, Plaintiff's Motion to Enforce Litigants' Rights is hereby **GRANTED**.

### **I. Factual History**

Plaintiff, BBS on behalf of AS, a minor child ("Plaintiff"), is a citizen of the State of New Jersey and resides within the geographic area served by the Greenwich Township School District. BBS is the parent of AS. AS is a student within the Greenwich Township public school system. AS is enrolled in the Defendants' Response to Intervention ("RTI") program. Defendant, Greenwich Township Board of Education ("BOE"), is a public agency school board in Gloucester County, New Jersey. The BOE is a "public agency as the term is defined by N.J.S.A. 47:1A-1. Defendant, Scott A. Campbell ("Campbell"), is the official records custodian of the BOE and is a "custodian of government record" as that term is defined by N.J.S.A. 47:1A-1.

In February of 2023, Plaintiff filed three separate requests for certain documents and records in possession of the BOE. On February 9, 2023, Plaintiff filed an OPRA request asking for emails dated between September 1, 2021, and February 9, 2023, that refer to AS that were sent or received by fifteen separate employees of the BOE. All fifteen employees were listed separately in the request. On February 10, 2023, Plaintiff also filed an OPRA request with Defendants seeking copies of records kept by the school nurse referring to AS dated between September 1, 2021, and February 9, 2023. On February 10, 2023, Defendants denied access to the emails claiming that the emails were student records not accessible to Plaintiff. On February 11, 2023, Plaintiff filed an OPRA request with Defendants requesting

“[a]ccess to records dated between September 1, 2021, to present which refer to [AS]’s discipline records[,]” except for records already sent or received to Plaintiff. In response, Plaintiff received the following records: Child Study Team evaluation reports, Speech IEP, AS’s 504 Plan, AS’s 2021-2022 report card, and the social work history addendum for the child study team evaluation.

## **II. Procedural History**

On March 16, 2023, Plaintiff filed a Verified Complaint and Order Show Cause. On March 17, 2023, the Order to Show Cause was executed, which included a briefing schedule establishing Defendants' response date of April 10, 2023, and a return date of May 1, 2023. In a letter dated April 12, 2023, Defendants requested an extension. Defendants requested their answer and opposition be filed by May 1, 2023, and Plaintiff’s reply brief to be filed by May 8, 2023. The request was GRANTED. On May 12, 2023, well after its pleadings were due, Defendants requested a second extension. The Court GRANTED Defendant another extension and set new due dates consistent with Defendants request: answer and opposition were now due on May 12, 2023, with a return on June 15, 2023. On June 14, 2023, over a month late and the day before the return date, Defendants filed an answer and opposition. In Defendants pleadings, Defendant also states that an answer to the Amended Complaint was filed on May 15, 2023. There was no indication in eCourts that any such answer was even filed.

On June 15, 2023, this Court, by default due to Defendants continued failure to timely respond, entered an Order granting Plaintiff’s request. The Court provided Defendant three opportunities to respond to the OPRA request, but Defendants failed to timely file any response. Despite the Order granting Plaintiff’s relief, the Court scheduled a case management conference for July 6, 2023, assuming this would give the Defendant an opportunity to advance any relevant arguments. The Court also Ordered that the parties “are expected to meet and confer regarding any outstanding OPRA requests, prior to the [scheduled Case Management] Conference.” After entering an Order granting an OPRA request, this Court has never scheduled a post Order process and case management conference, but felt it was important to do so in this case, due to the default, coupled with the potential sensitivity of a child’s records.

On June 29, 2023, Defendants requested an adjournment of the July 6, 2023, case management conference. Defendants request was denied. The Court felt it best to address any case management issues in a timely fashion and based upon the Defendants already established history, did not have any confidence that an adjournment would prove to be productive.

At the July 6, 2023, case management conference, the Court ordered that “Defendant shall submit to Plaintiff the documents as Ordered in the Court’s June 22, 2023, Order and/or appropriately executed Paff certifications by July 31, 2023.” (It should be noted that the Order is dated June 15, 2023, but uploaded on June 22, 2023). The Court purposely included language in the Order providing the Defendants an opportunity to raise any objections to producing certain documents, particularly that they did not exist, by allowing a Paff certification to be filed. Also, if there were records exempt for any reason, the Defendant could advance those concerns as well. Although Defendant should have but failed to raise any such defenses prior to a determination on the initial Complaint, the Court still provided Defendant the opportunity to do so in its fashioning of a case management Order. The Court scheduled another case management conference for August 18, 2023.

Due to conflicts in the Court’s schedule, the August 18, 2023, case management conference was not heard until September 18, 2023.

At the September 18, 2023, case management conference, the Court addressed a dispute regarding the Paff certification. The Court additionally found that the Defendants presumably “just complied” with the requirements of the June 22, 2023, Order, by providing a last-minute dump of documents on Plaintiff. Since the Plaintiff needed to review what was provided to determine compliance, Plaintiff was given until September 20, 2023, to advise Defendants what documents, if any, were still missing. Defendants were given until September 25, 2023, to reply to Plaintiff’s September 20, 2023, response. The Court also scheduled another Case Management Conference for October 2, 2023, to continue to closely monitor compliance.

At the October 2, 2023, Case Management Conference, it was clear that the parties were at impasse as to compliance with the June 15, 2023, Order. Accordingly, the Court Ordered a briefing schedule and scheduled an in person hearing so testimony could be taken to resolve any factual disputes. The hearing was scheduled for November 9, 2023. Upon joint request of the parties, the in-person hearing was adjourned until December 11, 2023, again adjourned to January 11, 2024, and yet again adjourned to February 12, 2024. The briefing schedule was also modified to require Plaintiff to file any Motion by January 5, 2024, and Defendant to file a response by January 22, 2024.

On January 8, 2024, Plaintiff, albeit three days late, filed a Motion to Enforce Litigants Rights. Defendant never responded at all to the motion, not even to object to the late filing. On February 8, 2024, the Court advised counsel that due to Defendants failure to file any response, the motion was being treated as unopposed and will be decided on the papers.

### **III. Findings**

Defendants are in violation of Plaintiff's litigant's rights for its failure to comply with the June 25, 2023, Order.

Despite every effort to provide Defendants the opportunity to be heard, the above history establishes that Defendants have contumaciously failed to comply and or file timely responses as required by most of the Court Orders. Yet despite these failures, the Court has continuously granted adjournments and fashioned Orders to provide the Defendants every opportunity to advance its legal positions. Unfortunately, this has proven unsuccessful as Defendants still are in non-compliance. Defendants' failures are particularly evidenced by the present application. Plaintiffs filed a motion seeking substantial penalties and damages for the Defendants continued non-compliance, and instead of responding in a timely, thorough and organized fashion, Defendants did not file any response at all. It was not until a couple days before the return date, well after any response was due, that the Court, simply at a loss as to what to do, advised counsel that the matter would be treated as unopposed. Instead of filing a letter, perhaps setting forth some extraordinary circumstances that caused its failure to respond, the Defendants on the actual day the matter was supposed to be heard, attempted to argue the merits of its case. This shows a total lack of understanding or care about Court procedures, a lack of respect for Plaintiff, and causes the Court to question whether Defendant, school board, is aware how inappropriately their case is being managed from the Courts perspective.

It is possible that the Defendants may have some legal defenses to what Plaintiff is seeking. Such defenses could range from the fact that documents are exempt or maybe that they do not even exist. The Court has done everything possible to provide a forum for the Defendants to advance such defenses, but Defendants have failed to do so.

Defendants have repeatedly failed to obey this Court's orders since the inception of this case. Defendants failed to comply in filing any timely opposition to the initial complaint, despite being given three opportunities to do so. After ruling in Plaintiff's favor, the Court scheduled a case management conference for July 7, 2023. On July 6, 2023, Defendants requested an adjournment of this conference. This request was denied, but demonstrates Defendants' delinquencies, delayed responses and last-minute adjournment requests. In its July 7, 2023, Order, the Court reinforced that the Defendants must comply with the June 15, 2023, Order.

Yet, despite all of the continued attempts to compel compliance prior to and since July 7, 2023, Plaintiff was compelled to file the within motion to enforce litigants right, which, not surprisingly, the Defendant did not respond. Defendants continue to be in violation of the June 15, 2023, Order.

#### IV. Remedy

New Jersey Court Rule 1:10-3 permits litigants to seek relief when a party does not comply with a judgment or order based on a claim for equitable relief and allows judicial discretion in providing relief. R. 1:10-3; In re N.J.A.C. 5:96, 221 N.J. 1, 17-18, 110 A. 3d 31 (2015); accord Abbott v. Burke, 206 N.J. 332, 371, 20 A.3d 1018 (2011).

Rule 4:4.1 provides that sanctions may be placed for remediation... not to be punitive. Relief under Rule 1:10-3 . . . is not for the purpose of punishment, but as coercive measure to facilitate the enforcement of the court order.” Ridley v. Dennison, 298 N.J. Siper 373, 381, 689 A.2d 793 (App. Div. 1997).

1. For all the reasons stated above the Court finds Defendants to be in violation of litigant’s rights.

2. Defendants shall pay Plaintiff all reasonable attorney’s fees and costs associated with the preparation and filing of the present application. Such fees shall be paid within 60 days of Plaintiff directly providing Defendants a certification of services. If Defendants disagrees with the amount requested, it will be Defendants obligation to file an application with the Court within two weeks of the receipt of Plaintiff’s demand. The Court is specifically establishing a procedure to place the burden on the Defendants to object, as it has no confidence that it will receive a timely response from the Defendants if the burden is placed on the Plaintiffs to file a certification of services, which Defendants will then be given an opportunity to respond. With this process in place, Defendants will suffer the direct result of its failure to respond timely. No adjournments will be granted to Defendants challenge to the demand. A failure to timely file an objection with the Court will result in the full amount being due to Plaintiffs.

3. To encourage Defendant to comply with the terms of the Court’s June 15, 2023, Order, the Defendants shall pay \$100.00 per day for each day it is not in compliance with the June 15, 2023, Order, effective today, February 26, 2024. The Court recognizes that this is substantially less than Plaintiff requested but remains mindful that it is potentially tax dollars at stake. The Court is also hopeful, that the additional remedy in paragraph 4 below, will result in prompt action towards compliance. Such monies shall be directly paid to Plaintiff, to be held in Plaintiff’s trust account until further Order of the Court. Plaintiff shall file a request to release the funds once the June 15, 2023, Order is satisfied. Plaintiff will be entitled to full reimbursement by Defendants of all fees for the filing of the release application. The delinquency monies shall be submitted to Plaintiff every month, starting April 1, 2024. The amounts shall be calculated based upon the number of

days in the previous month that the June 15, 2023, Order has not been satisfied. For instance, if the Order is not satisfied as of April 1, 2024, the Defendant must pay \$300 for the three days in February plus \$3,100 for the 31 days in March, for a total of \$3,400. On May 1, 2024, \$3,000 will be due for the 30 days in April, and so on.

4. By March 4, 2024, Defendants shall upload a certification by a non-attorney representative of Defendant, that the within Order and memorandum of decision has been provided to such person, that they read it and that it will be distributed to all appropriate members of Defendant at its next regularly scheduled meeting.

**Benjamin C. Telsey, A.J.S.C.**

**February 26, 2024**